

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE RECEIVED
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Applicant: Hawinger, et al. Examiner: Ronald B. Schwadron **MAY 15 2007**
Serial No.: 09/925,284 Group Unit: 1644
Filed: August 9, 2001
For: ENHANCED ANTIGEN DELIVERY AND MODULATION OF THE IMMUNIE RESPONSE THEREFROM

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being transmitted via facsimile to (571) 273-8300, to the COMMISSIONER FOR PATENTS, P.O. BOX 1450, Alexandria, VA 22313-1450 on May 15, 2007.

Loretta Kavanagh
(Name of Person Transmitting)

Loretta Kavanagh 5/15/07
(Signature and Date)

CONFIRMATORY AUTHORIZATION TO CHARGE DEPOSIT
ACCOUNT FOR EXTENSION OF TIME FEE IN CONNECTION WITH
RESPONSE TO NOTIFICATION OF NON COMPLIANT APPEAL BRIEF

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Applicants wish to confirm by this correspondence, that the Commissioner is authorized to charge Deposit Account No.: 11-1153 in the amount of \$60.00, the extension fee required for a small entity, to cover the one month period of time that passed from the original due date of April 14, 2007, to the date on which a Response to Notification of Non-Compliant Appeal Brief was filed, which is May 14, 2007.

In support of this authorization and in confirmation of the Applicants' notwithstanding to submit same without further penalty or time extension fees imposed, Applicants attach hereto and as-filed copy of Applicant's Response to Notification of Non-Compliant Appeal Brief, which sets forth on Page 4 thereof, a specific authorization for additional fees or underpayments in connection with the submission. On this basis therefore, Applicants believe that the Deposit Account named herein can be properly

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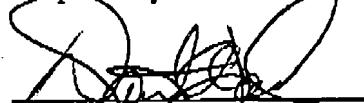
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charged and that the only charges that should be required under the circumstances, are the charges associated with the request for a one month extension at the small entity rate.

Applicants request confirmation of safe receipt of this correspondence and confirmation that the only fees outstanding, and that are favorably paid and satisfied herein, is the one month extension of time fee specified presently.

Of such, further and favorable action is courteously solicited.

Respectfully submitted,



David A. Jackson
Attorney for Applicant(s)
Registration No.: 26,742

KLAUBER & JACKSON, LLC
411 Hackensack Avenue, 4th Floor
Hackensack, New Jersey 07601
201-487-5800

Enclosures: As-mailed (Filed) Copy of Response to Notification of
Non-Compliant Appeal Brief

PAGE 47 / RCV'D AT 5/15/2007 3:15:41 PM [Eastern Daylight Time] , SVR:USPTO-EFAX-37 , DIS:2738300 , CSID: , DURATION (mm:ss):02:16

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hawiger *et al.*

Examiner: Ronald B. Schwadron

Serial No.: 09/925,284

Group Unit: 1644

Filed: August 9, 2001

For: ENHANCED ANTIGEN DELIVERY AND MODULATION OF THE
IMMUNE RESPONSE THEREFROM

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to MS APPEAL BRIEF-PATENTS,
COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on May 14, 2007.

Loretta Kavanagh
(Name of Person Depositing Mail)

Loretta Kavanagh 5/14/2007
(Signature of Person Depositing Mail)

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Dear Sir:

The following remarks are responsive to a Notification of Non-Compliant Appeal
Brief, dated March 14, 2007.

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KLAUBER & JACKSON, LLC
411 HACKENSACK AVENUE, 4TH FLOOR
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FACSIMILE: 201-343-1684/7544

facsimile transmittal

To: U.S.P.T.O. Fax: 571-273-8300
From: DAVID A. JACKSON Date: 5/15/2007
Re: Our File: 600-1-081CONCIP Pages: 7 (Including this page)
Cc:

Urgent For review Please comment Please reply Please recycle

If you have any questions regarding compatibility, you may reach David/Loretta at (201) 487-5800

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REMARKS

Applicants received a Notification of Non-Compliant Appeal Brief dated March 14, 2007, wherein the Examiner asserts that the Appeal Brief filed on November 27, 2006 is defective for the following reasons.

Support for the Claimed Methods

The Examiner asserts that the Appeal Brief does not disclose where the claimed methods find support in the specification as required by 37 C.F.R. § 41.37 (c)(1)(v)). The Examiner further states that “[w]hilst the claims use DEC-205, they are not drawn to DEC-205, but methods which use DEC-205.”

In response, Appellants acknowledge that the claims on appeal are not drawn to DEC-205 *per se*, but are instead drawn to methods which employ DEC-205 vaccine conjugates. However, since DEC-205 vaccine conjugates are a critical component of the claimed methods, it is nearly impossible to isolate and separate support for the presently claimed methods from support for DEC-205 vaccine conjugates. Indeed, support for both DEC-205 vaccine conjugates and the presently claimed methods, which employ such conjugates, is intertwined in the specification.

For example, Appellants respectfully submit that the passages from the specification recited in the “Summary of the Claimed Subject Matter” set forth on pages 2-3 of the Appeal Brief do indeed explicitly support the presently claimed methods, as well as the individual elements used in the methods (*i.e.*, DEC-205 vaccine conjugates). Thus, contrary to the Examiner’s assertion, the Appeal Brief filed on November 27, 2006 complies with 37 C.F.R. § 41.37 (c)(1)(v)).

Evidence Appendix

The Examiner asserts that the Evidence Appendix does not disclose where the cited evidence was entered by the Examiner, as required by 37 C.F.R. § 41.37 (c)(1)(v)).

In response, Appellants respectfully note that the Declaration by Dr. Michel Nussensweig (Appendix B) referred to in the Evidence Appendix was originally

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submitted with the Amendment and Response filed by Appellants on January 4, 2005. Although the Examiner never formally indicated that the Declaration was entered, Appellants assume that the Declaration was, in fact, entered along with Appellant's Amendment and Response, since the Examiner specifically referenced the Declaration in the subsequent Office Action dated July 22, 2005 (see page 4, paragraph 1 of the Office Action). As such, Appellant's failure to indicate where the cited evidence was entered by the Examiner was due to the fact that the Examiner never formally acknowledged entry of the Declaration. This should not, however, preclude Appellants from citing the Declaration as evidence in the Appeal Brief, since the Declaration was indeed clearly entered. Notwithstanding, Appellants have amended the Evidence Appendix to state that the Declaration was entered with Appellant's Amendment and Response filed on January 4, 2005 under the assumption that this is correct.

Further, the Examiner notes that the Guo *et al.* reference (*Hum Immunol.* 2000 Aug; 61(8):729-38) was not filed on January 4, 2005, but was instead filed on December 27, 2005.

In response, Appellants respectfully note that this reference was cited *within* the Declaration by Dr. Michel Nussensweig (submitted with the Amendment and Response filed by Appellants on January 4, 2005) and thus, for the sake of completeness, Appellants provided a copy of this reference as evidence in the Appeal Brief. Notwithstanding, Appellants confirm the Examiner's statement that the reference itself was not filed on January 4, 2005, but was instead cited in an Information Disclosure statement filed by Appellants on December 27, 2005. Accordingly, the replacement Appeal Brief submitted herewith contains an amended Evidence Appendix (page 14), which specifies that Guo *et al.* (Appendix C) was cited in an Information Disclosure Statement dated December 27, 2005.

CRF Diskette Problem Report

The Examiner indicates that the Brief is non-responsive to paragraph 3 of the Office Action dated March 28, 2006. Specifically, Paragraph 3 indicates that the computer readable form (CRF) of the Sequence Listing that was submitted by Appellants

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was blank. In response, Appellants submit herewith a replacement CRF of the Sequence Listing, as well as a copy of the CRF Problem Report, thereby rendering this issue moot.

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CONCLUSION

Responsive to the foregoing issues, Appellants submit herewith a replacement Appeal Brief, which contains an amended Evidence Appendix, found on page 14 and request that this Appeal Brief replace the original as filed on November 27, 2006. Applicants assert that the replacement Appeal Brief corrects the deficiencies noted in the Notification of Non-Compliant Appeal Brief.

No fees are believed to be required for the present response, but if this is in error, the Commissioner is hereby authorized to charge any fees, or credit any overpayment, to Deposit Account No. 11-1153.

Respectfully submitted,



David A. Jackson
Attorney for Applicant(s)
Registration No. 26,742

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Enclosures: Replacement Appeal Brief
Replacement CRF of Sequence Listing
Copy of CRF Problem Report, dated 12/30/2005